

Message Text

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ORIGIN EA-06

INFO OCT-01 SS-14 ISO-00 DODE-00 L-01 NSC-05 NSCE-00 IO-03

OFA-01 DLOS-03 PM-03 INR-05 CIAE-00 SP-02 /044 R

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S E C R E T STATE 201476

LIMDIS JOINT STATE/DEFENSE MESSAGE

E.O. 11652: GDS

TAGS: MA RR, PFOR, PBOR, MOPS, KS

SUBJECT: FUTURE ACTIONS IN INTERNATIONAL WATERS OFF ROK
COAST

REF: (A) SEOUL 1531; (B) STATE 51364

1. APPRECIATE CLEAR DEFINITION OF PROBLEMS INVOLVED AS SET
FORTH REF (A). WE RECOGNIZE THAT AFTER MANY YEARS OF
GENERAL DE FACTO OBSERVANCE OF NLL AS UNOFFICIAL NORTH-
SOUTH DIVISION, IT IS DIFFICULT FOR ROK TO ACCEPT NK OPER-
ATIONS SOUTH OF THIS LINE, WHETHER BY NK FISHING OR PATROL
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BOATS. FACT THAT ROK HAS RESTRICTED ITS OWN FISHING AND
PATROLS EVEN ON THE HIGH SEAS IN ORDER TO AVOID INCIDENTS
MAY WELL ADD TO ROK DIFFICULTIES IN ACCEPTING SUCH ACTIONS
BY NORTH. WE FURTHER UNDERSTAND THAT THIS MAY CREATE

PRESSURES ON UNC OPCON, GIVEN APPARENT ROK DESIRE TO TAKE ACTIONS ON THE HIGH SEAS WHICH COULD BE INCONSISTENT WITH INTERNATIONAL LAW IN ORDER TO REPEL NORTHERN CRAFT.

2. ACKNOWLEDGING THESE PRESSURES, WE NEVERTHELESS MUST MAINTAIN POSITION SET FORTH REF (B). IN THIS CONNECTION, PROPOSED "NON-FORCEFUL HERDING" SUGGESTED PARA 8 REF (A) RAISES BASIC INTERNATIONAL LAW QUESTIONS. AS NOTED REF (B), RIGHT OF "APPROACH AND IDENTIFICATION" DOES NOT EXTEND IN PEACETIME TO RIGHT TO HAZARD OR DIRECT COURSE OF CHALLENGED VESSEL. EVEN IF NO WEAPONS ARE EMPLOYED,

HERDING COULD IMPLY AN ATTEMPT TO COMPEL ANOTHER VESSEL TO ADOPT A CERTAIN COURSE, AND WOULD NOT REPEAT NOT BE PERMISSIBLE ON THE HIGH SEAS UNDER INTERNATIONAL LAW. SIMPLE SURVEILLANCE IS, OF COURSE, PERMISSIBLE UNDER INTERNATIONAL LAW, AS WELL AS PRUDENT UNDER CIRCUMSTANCES PREVAILING IN KOREA.

3. WITH RESPECT GENERALLY TO CONSIDERATIONS SUMMARIZED PARA 9 REF (A), WE OF COURSE RECOGNIZE RIGHT OF SELF DEFENSE AND THAT ROK SECURITY MUST BE PROTECTED, BUT WE ARE CONCERNED THAT ROK MAY TEND TO DEFINE VERY BROADLY WHAT IS AN NK HOSTILE ACT OR THREAT TO SECURITY, AND HENCE MAY WISH TO TAKE COUNTER-ACTIONS WHICH WOULD BE DIFFICULT FOR US TO JUSTIFY. WE DO NOT, FOR EXAMPLE, CONTEST RIGHT OF ROK ON HIGH SEAS TO DEFEND THEMSELVES AGAINST DIRECT ATTACK, BUT MERE NK FISHING OR PATROLLING IN HIGH SEAS SOUTH OF NLL, EVEN IF NEAR ROK FISHING BOATS, CANNOT BE USED AS JUSTIFICATION FOR COERCIVE ACTIONS BY UNC.

4. WITH THESE CONSIDERATIONS AND ANALYSIS SET FORTH REF (B) IN MIND, FOLLOWING FURTHER GUIDANCE IS PROVIDED IN RESPONSE TO POINTS RAISED IN PARA 9 REF (A):

(B) (1): THERE IS NO INTERNATIONAL LAW RIGHT IN PEACETIME
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TO BLOCK OR APPROACH AND CHALLENGE VESSELS IDENTIFIABLE AS WARSHIPS ON HIGH SEAS. AS NOTED ABOVE, SURVEILLANCE IS PERMISSIBLE AND PRUDENT.

PARA (B) (2): CONCUR IN EMBASSY VIEW THAT NORTH/SOUTH HOT LINE WOULD BE APPROPRIATE CHANNEL FOR COMMUNICATION IN MOST CASES DEVELOPED OUTSIDE TERRITORIAL WATERS.

PARA (C): "HERDING" OF NK FISHING BOATS, I.E., AN ATTEMPT TO COMPEL ANOTHER VESSEL TO ADOPT A CERTAIN COURSE IS NOT PERMISSIBLE FOR REASONS GIVEN ABOVE AND IN REF (B).

PARA (D): QUESTION OF WHETHER ROK FISHING BOATS WILL BE

ALLOWED TO RE-ENTER ZONE ABANDONED LAST YEAR IS DECISION FOR ROKG, AND WE FULLY UNDERSTAND THAT ROKG WOULD WISH TO DO SO. IN DOING SO, ROKG SHOULD CLEARLY UNDERSTAND THAT WE WILL NOT PARTICIPATE IN ANY ACTION TO ESTABLISH AREA AS EXCLUSIVE ROK FISHING ZONE.

PARA (E): RECOGNIZING THERE NO PRESENT PROSPECT OF PROGRESS WE SUPPORT EMBASSY VIEW THAT ROK CONSIDER EVENTUAL NEGOTIATIONS WITH NORTH ON THIS QUESTION. EVEN

IF AGREEMENT NOT REACHED IT WOULD BE HELPFUL FOR TWO SIDES TO SPELL OUT THEIR UNDERSTANDINGS AND POLICIES ON FISHING RIGHTS, HOPEFULLY IN CONTEXT EXISTING LOS PRINCIPLES.

5. UNDER THESE CIRCUMSTANCES THERE REMAIN, AS YOU SUGGEST TWO POSSIBLE ALTERNATIVES. ONE IS THAT PATROL OF AREAS FISHED BY ROK BOATS CONTINUES TO BE CARRIED OUT BY ROK VESSELS UNDER UNC OPERATIONAL CONTROL; IN THIS CASE, VESSELS CANNOT ENGAGE IN IMPERMISSIBLE ACTIONS CITED ABOVE AND FIRM OPERATIONAL CONTROL OVER THEM MUST BE EXERCISED EVEN IF ROKG DISAGREES IN SPECIFIC ACTIONS. SECOND POSSIBILITY OPEN TO ROKG, OF COURSE, IS THAT IT COULD CHOOSE TO CARRY OUT THESE PATROLS BY VESSELS UNDER ITS OWN OPERATIONAL CONTROL UNCONNECTED WITH UNC. THIS COULD MEAN THAT ROKG WOULD DETACH CERTAIN VESSELS NOW UNDER UNC OPERATIONAL CONTROL FROM THAT CONTROL. IN THAT CASE ROKG WOULD HAVE TO UNDERSTAND THAT IF VESSELS
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UNDER ITS CONTROL ENGAGE IN UNILATERAL ACTIONS IN CONTRAVENTION INTERNATIONAL LAW, UNC AND USG CANNOT SUPPORT THEM. HOWEVER, THERE WOULD STILL BE OBVIOUS DANGER THAT ROK ACTION, IF CONTRARY TO WHAT THEY WOULD BE AUTHORIZED IF UNDER UNC CONTROL, MIGHT PRECIPITATE MAJOR INCIDENT OR RETALIATION BY NK WHICH MIGHT DRAW IN USG. THEREFORE IT WOULD REMAIN IN OUR INTEREST TO DISCOURAGE THIS KIND OF ACTION BY ROKG.

6. REQUEST EMBASSY/CINCUNC VIEWS ON ALTERNATIVES REFERRED TO IN PRECEDING PARA. ALTERNATIVES SHOULD NOT BE DISCUSSED WITH ROKG AT THIS POINT.

MAW

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INTERNATIONAL LAW, ARMED FORCES, HIGH SEAS INCIDENTS, YELLOW SEA, FISHING BOATS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 AUG 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE201476
Document Source: ADS
Document Unique ID: 00
Drafter: EA/K:EKELLY:CHG
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D750293-0067
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197508101/baaaasyi.tel
Line Count: 157
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN EA
Original Classification: SECRET
Original Handling Restrictions: LIMDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: SECRET
Previous Handling Restrictions: LIMDIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 02 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 JUL 2003 by BoyleJA>; APPROVED <10 NOV 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: PFOR, PBOR, MOPS, MA, US, KS
To: SEOUL
CINCUNC INFO USUN N Y
CINCPAC HONOLULU HI
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006